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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

STARDOCK SYSTEMS, INC.,

Plaintiff,

vs.

PAUL REICHE III and ROBERT
FREDERICK FORD,

Defendants.

Case No.: 4:17-cv-07025-SBA

**DECLARATION OF BRADLEY R. WARDELL
IN SUPPORT OF STARDOCK SYSTEM'S
MOTION FOR A TEMPORARY
RESTRAINING ORDER AND ORDER TO
SHOW CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT BE GRANTED**

AND RELATED COUNTERCLAIM

1 I, Bradley R. Wardell declare:

2 1. I am the founder, President and CEO of Stardock Systems, Inc. (“Stardock”).
3 Except as otherwise indicated, the following is within my own personal knowledge and if called
4 upon to do so I would and could competently testify to the same.

5 2. *Star Control* is a well-known space-adventure video game franchise that has
6 generated an almost cult-like following in the science fiction, video game community.

7 3. On information and belief, in 1999, Atari, Inc. (“Atari”) acquired Accolade, Inc.
8 (“Accolade”). Through a July 1, 2013 asset purchase agreement, and for \$300,000, Stardock
9 purchased certain assets from Atari Inc. (“Atari”) pursuant to Atari’s bankruptcy proceedings
10 including all rights to the Star Control intellectual property (the “Star Control IP”).

11 4. In 2013, immediately after its acquisition of the Star Control IP, Stardock began to
12 create a new game under the STAR CONTROL mark titled *Star Control: Origins* (“Origins”).
13 (“Origins”). The creation of *Origins* was the very reason why Stardock purchased the Star Control
14 IP from Atari.

15 5. Almost immediately after Stardock’s acquisition of the Star Control IP from Atari
16 in 2013, I reached out to Mr. Reiche and Mr. Ford and offered them the right of first refusal to
17 collaborate with Stardock in the development of Origins. I kept them apprised of updates on the
18 production of Origins and on numerous occasions requested their involvement. Reiche and Ford
19 declined to participate in the development of Origins. Reiche and Ford knew about Stardock’s
20 development of a new Star Control game at least as early as 2013.

21 6. Stardock released a space combat mini-game as *Star Control: Origins – Beta 1:*
22 *Fleet Battles* (“Fleet Battles”)) on or about November 16, 2017. Since then, Stardock has also
23 released certain promotional and other material and content relating to *Origins*, including but not
24 limited to downloadable content (“DLC”) packs, on its own website and through third-party
25 distributor websites to generate public excitement over the impending release of the game.

7 9. Attached hereto as Exhibit A is a true and correct copy of an August 17, 2018 letter
8 from Stephen Steinberg to Valve Corp. d/b/a/ Steam, (the “Valve DMCA Notice”) a copy of which
9 was emailed to me from Valve Corp. on August 20, 2018. As a result of the Valve DMCA Notice,
10 Valve removed the works identified in the notice from its platform.

13 11. Attached hereto as Exhibit C is a true and correct copy of the August 21, 2018
14 DMCA notice to Good Old Games (“GOG”) (the “GOG DMCA Notice”) As a result of the GOG
15 DMCA Notice, GOG removed the works identified in the Notice from its platform.

18 13. Fleet Battles was released in November 2017 but Defendants did not submit a
19 DMCA notice until the month before the September 20, 2018 release of *Origins*.

15. Steam is, by far, the most popular digital PC game store. By way of example, the year another of Stardock's PC games, Galactic Civilizations III, was released, 88.7% of its sales occurred on Steam. We expect similar numbers for Origins. A DMCA takedown on Steam would reduce sales and revenue by approximately 88% turning what would have been a successful game into a failure. Steam is not just a major distributor. Steam's popularity is unrivaled and Stardock's

1 inability to sell *Origins* on the Steam platform effectively eviscerates Stardock's access to digital
2 PC game customers. Steam and GOG represent approximately 93% of Stardock's distribution
3 channel.

4 16. If *Origins* is not released on time on Steam, significant resources expended by
5 Stardock in advertising and marketing the game will be wasted and its reputation will be harmed
6 in the marketplace.

7 17. *Origins* has been in development at Stardock since January of 2014 for a total of
8 56 months.

9 18. Stardock has spent over \$10,000,000 dollars developing *Star Control: Origins*
10 (this does not include marketing costs, etc.).

11 19. The September 20, 2018 release date has been widely communicated to Stardock's
12 customers, partners and press. Attached hereto as Exhibit E are true and correct copies of a
13 samplings of announcements made regarding the September 20, 2018 release date of *Origins*.

14 20. To date, 6,510 people have preordered *Star Control: Origins* on Steam. Stardock
15 has received an additional 856 preorders of *Star Control: Origins* on the online platform "GOG."
16 Payment for these preorders have already been collected by Stardock and distributors of the
17 game. There are also approximately 4,000 members of the game's "founder's forum" that are
18 slated to receive a copy of the *Origins* game. In total, Stardock has received over 10,000 pre-
19 orders for the *Origins* game.

20 21. To date, 55,594 people have placed *Origins* on their "wishlist" on Steam.

21 22. To date, at least 3,369,930 people have visited the *Star Control: Origins* store page
22 on Steam. Approximately one third of those visits happened in the last week. This page lists the
23 release date as September 20, 2018.

24 23. To date, at least 10,268,385 people have seen *Star Control: Origins* advertised on
25 Steam alone. This does not include advertising on other platforms.

24. Any DMCA takedown notice will also irreparably impact Stardock's ability to partner with a game console publisher. Stardock is currently seeking a game console publisher for *Origins* and has met with several major publishers to accomplish this. A DMCA takedown of the game will prevent any console publisher from publishing the game. Without a game console publisher, *Origins* will only be available on PC which will reduce its potential audience and revenue by approximately 50 percent.

25. Stardock has spent hundreds of thousands of dollars promoting Star Control as launching on September 20, 2018. Thousands of people have already pre-ordered and been told they will receive the game on September 20. DMCA take down notices permanently harm our relationship with our customers.

26. The rumored suggestion that *Origins* will not be released has *already* led to backlash from Stardock's customers who have pre-ordered the game and then requested a refund. Following are quotes from customers who requested a refund "because the game might not be released":

- "I preordered this because I loved the old ones so I wanted to support the project but it turns out the creators of the old ones and stardock whose making this are in a huge legal battle for the IP and this may never even come out let alone it's not supporting the original creators"
- "Due to the legal embattlement surrounding the 'Origins' game, it is likely that it will not be released for several years. If possible, I would be fine with keeping Ur-Quan Masters if a full refund is not possible due to me having played it, but the Origins product is something I would definitely like a refund for."
- "i [sic] purchased star control originas [sic] with expectation there would be a playable demo soon in december [sic] they went into litigation with the original developers and there is no expected time it will be released, i [sic] would like a refund ,,,,"
- "I want to cancel my order because I don't think this game will see daylight because of the mess they are having with original creators of Star Control. I'll use my money to some other games."

- “Taking too long to finish and the lawsuit does’nt [sic] help.”
- “Due to legal action, I have serious doubts this game will ever be released.”

27. Stardock has spent hundreds of thousands of dollars promoting *Star Control: Origins* as launching on September 20, 2018. Marketing of *Origins* has been underway since June 2018. Stardock’s marketing efforts include (1) A E3 (trade fair) Booth and Systems Presence, which included demo stations with Facebook; (2) *Origins* featured its business partners’ websites; (3) product strategy and go-to-market campaigns, including bundle package promotions; (4) Pax West 2018 Show Floor Presence, Giveaways and main screen video feature; and (5) public partnership announcements.

28. Stardock is very deeply ingrained with strategy partners across the technology, hardware, distribution and content landscape. False accusations that create doubt amongst Stardock’s ecosystem of partnerships and players in the industry will have material financial and reputation impacts that will have direct financial consequences due to failure to deliver on existing contracts.

29. *Origins*’ success is critical to Stardock’s growth plans, beyond just selling games. It is the core title that validates Stardock’s business development strategy and is central to the company’s next phase of growth. The damage from a failed launch would likely impact the sale of not only *Origins*, but all of Stardock’s offerings.

30. In the event that a DMCA notice to GOG or Steam regarding *Origins* be issued on September 20, 2018, the game will have been promoted and released but will no longer be able to be purchased legally from the digital distributors that represent the vast majority of the market. The game reviews will begin to issue on the September 20, 2018 release date and we expect that it will lead many players to seek other ways to find the game. Without a legal avenue for purchase, many customers will acquire the game through piracy distribution channels. Sales would be irreparably lost because if there is no legal means to obtain the game many people will

1 resort to getting it some other way. We project sales of approximately \$3.1 million in the first 60
2 days of *Origins*' release with approximately \$2 million of that being in the first 14 days. Sales
3 lost due to piracy would be difficult to calculate, but would be significant in any case.

4 31. The gaming press would also interpret a DMCA take down notice as a signal that
5 the merits of the case are with Reiche and Ford. There has been enormous public scrutiny of this
6 litigation and should a takedown notice preclude sale of *Origins* on Steam, it would permanently
7 damage the value of Stardock's brand and reputation and very likely impact the sales of the *Origins*
8 game.

9 32. Stardock is a privately held company that self-funds its projects. Any delay in the
10 release of *Star Control: Origins* would require Stardock to severely cut back on its gaming staff
11 and require it to lay off approximately 26 employees.

12 I declare under penalty of perjury under the laws of the United States and the State of
13 California that the foregoing is true and correct.

14 Executed this 7th day of September 2018 in Plymouth, Michigan.

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18 Bradley R. Wardell
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